

IC 35-36-6

Chapter 6. Change of Venue

IC 35-36-6-1

Verified motion by defendant; bias or prejudice; hearing; duties of clerk and sheriff

Sec. 1. (a) In any criminal action, the defendant may request a change of venue from the county by filing a verified motion for change of venue alleging that bias or prejudice against the defendant exists in that county.

(b) When a motion for a change of venue is filed, the court shall hold a hearing on the motion and may grant a change of venue to the most convenient county. When a change of venue is granted, the clerk shall immediately:

- (1) make a transcript of the proceedings and orders of the court;
- (2) seal the transcript with the original papers; and
- (3) deliver them to the sheriff.

The sheriff shall immediately deliver them to the clerk's office of the proper county, and make his return accordingly. However, only one (1) change of venue from the county may be granted.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.311-1983, SEC.48; P.L.170-1984, SEC.5.

IC 35-36-6-2

Trial in court to which venued

Sec. 2. After a change of venue, the cause shall be docketed and stand for trial. The court to which the case has been venued shall proceed in all respects as if the indictment had been found and returned by a grand jury impaneled in that court, or as if the information had been originally filed in that court.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-3

Transfer of custody of defendant

Sec. 3. When ordered to do so by the court allowing a change of venue, the sheriff of the county from which change of venue is granted, when the defendant is in his custody, shall:

- (1) transfer and deliver custody of the defendant; and
- (2) deliver a certified copy of the order for change of venue at the same time the defendant is delivered;

to the sheriff of the county to which change of venue has been granted. The sheriff of the county to which change of venue has been granted shall receive the defendant and detain him in custody until the defendant is discharged from his custody. The sheriff who receives the defendant shall give a certificate that he has received the defendant to the sheriff of the county from which change of venue has been granted.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-4

New prosecution; election of court by defendant; alternative disposition

Sec. 4. If it is necessary to institute a new prosecution for the same offense after a change of venue has been taken, the defendant in the case shall elect, when required to do so by the court, the court in which he prefers the new prosecution to be instituted. He may choose either the court from which venue was granted or the court to which venue was granted, and, after his choice, further prosecution shall be instituted in that court. The defendant may then be:

- (1) recognized to appear in the court which he elects;
- (2) committed for want of bail;
- (3) detained in custody; or
- (4) remanded to the county from which the change was taken;

as the case may require and in accordance with the defendant's choice of courts.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-5

New prosecution; recognizance

Sec. 5. If in a new prosecution for the same offense, the defendant gives recognizance to appear before the court of the county from which the change of venue was taken, the recognizance shall be taken of record, and shall be recorded by the clerk of that court.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-6

New prosecution; new indictment or information

Sec. 6. If on a new prosecution a defendant is prosecuted for the offense in the court to which the change of venue was taken, a new indictment may be found, or a new information may be filed, and the case may be prosecuted to final execution as if the offense had been committed in the county of that court. However, the indictment or information in such a case must state how the proceeding came into the court where the party elects to be tried, and that he has elected to be tried in that county.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-7

Failure of defendant to elect county of trial; remand

Sec. 7. If in a new prosecution for the same offense the defendant refuses to elect in which county the new prosecution is to be instituted, he shall be recognized to appear before or be remanded to the proper court of the county from which the change of venue was taken, as if he had elected to be proceeded against in the county from which the change of venue was taken.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-8

Costs and expenses; liability; audit, certification, and collection

Sec. 8. (a) In all changes of venue from the county, the county

from which the change is taken is liable for:

- (1) the expenses and charges of removing, delivering, and keeping the defendant;
- (2) the per diem allowance and expenses of:
 - (A) the jury trying the cause; and
 - (B) any of the regular panel in attendance and not engaged in the trial; and
- (3) all other expenses necessarily incurred by the county to which the change is taken that result from the change of venue.

(b) All costs and charges included under subsection (a) shall be audited and allowed by the court trying the cause, certified to the auditor of the county from which the change of venue was first taken, and collected by the auditor of the county to which the change was taken. However, where specific fees are allowed by law for any duty or service, no additional costs may be allowed for that duty or service than could be legally taxed in the court from which the change was taken.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-9

Prosecuting attorney; pauper counsel; appointment; reimbursement for fees and expenses

Sec. 9. (a) In a criminal prosecution, if a change of venue has been taken from the county in which the prosecution originated, the prosecuting attorney from the original county shall prosecute the case in the trial court to which the case was venued. The trial court to which the case was venued may appoint a prosecuting attorney to assist on the case.

(b) In a case described in subsection (a), if the defendant is entitled to pauper counsel, the original trial court shall furnish pauper counsel. The trial court to which the case was venued may remove from the case the pauper counsel furnished by the original trial court, and:

- (1) request the original trial court to furnish another pauper counsel;
- (2) appoint pauper counsel of its choice; or
- (3) request the public defender of the state of Indiana to provide counsel under IC 33-40-2.

(c) The original trial court shall determine the amount of the fee and the expenses incurred by the pauper counsel and shall order the appropriate reimbursement to be paid to him by the county in which the prosecution originated. The fees and expenses of a public defender appointed under IC 33-40-2 shall be paid in accordance with that chapter.

As added by Acts 1981, P.L.298, SEC.5. Amended by P.L.98-2004, SEC.147.

IC 35-36-6-10

Sheriff; expenses of transportation

Sec. 10. The sheriff of the county from which venue was taken

shall receive actual and necessary expenses for transporting himself and his prisoner, in accordance with this chapter, from the county from which venue was taken to the county receiving the case. The court from which venue was taken shall allow these expenses.

As added by Acts 1981, P.L.298, SEC.5.

IC 35-36-6-11 Version a

Murder or Class A felony proceedings; selection of jury; verdict and judgment

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 11. (a) In any criminal proceeding wherein the defendant is charged with murder or a Class A felony to be tried before a jury in which a motion for a change of venue from the county is filed, the court may recognize but decline to grant the motion, and order that the jury be drawn from the residents of a county other than the county in which the court is located.

(b) Pursuant to an order under this section, the court may convene in any county in the state for purposes of jury selection. The venire may be drawn by the jury administrator of a court in the jurors' home county, or may be drawn by the court itself by random selection.

(c) After a jury is selected, the trial shall be held in the county of the court's location. The verdict of the jury and the judgment based upon it have the same validity and effect as if the jury had been drawn from the county of the court's location.

As added by P.L.1-1998, SEC.61. Amended by P.L.118-2007, SEC.32.

IC 35-36-6-11 Version b

Murder, Level 1, or Level 2 felony proceedings; selection of jury; verdict and judgment

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 11. (a) In any criminal proceeding wherein the defendant is charged with murder, a Level 1 felony, or a Level 2 felony, to be tried before a jury in which a motion for a change of venue from the county is filed, the court may recognize but decline to grant the motion, and order that the jury be drawn from the residents of a county other than the county in which the court is located.

(b) Pursuant to an order under this section, the court may convene in any county in the state for purposes of jury selection. The venire may be drawn by the jury administrator of a court in the jurors' home county, or may be drawn by the court itself by random selection.

(c) After a jury is selected, the trial shall be held in the county of the court's location. The verdict of the jury and the judgment based upon it have the same validity and effect as if the jury had been drawn from the county of the court's location.

As added by P.L.1-1998, SEC.61. Amended by P.L.118-2007, SEC.32; P.L.158-2013, SEC.390.